IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.696 of 2004
Date of decision : 15.12.2006

Satpal

.....Appellant

Vs.

Nand Lal & others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

Present : Mr. Vikas Bahl, Advocate
for the appellant.

Mr. Sham Lal Bhalla, Advocate
for respondent No.1.

...

MAHESH GROVER, J. (O)

The defendant-appellant is in appeal against the judgment of the learned lower appellate court dated 16.10.2003 and the judgment of the learned trial court dated 4.3.2003.

The plaintiff-respondent filed a suit for recovery of Rs.94,800/- on the ground that the appellant, who was a partner in firm operating under the name and style of M/s Mohan Lal & Co. and engaged in the business of commission agents at Bassi Pathanan was having regular dealings with him. Loan had been advanced to the appellant on various occasions and on 17.7.1994, after settlement of the accounts with the firm M/s Mohan Lal & Co., a receipt was issued by Nathu Ram for a sum of Rs.45,000/- to be paid along with interest at the rate of Rs.2% per month in favour of the respondent.

Nathu Ram died and the appellants who were the legal heirs of deceased Nathu Ram faced the afore-mentioned suit as

defendants. The execution of the receipt was denied and it was pleaded that it is a fabricated document since Nathu Ram was given to drinking liquor with the plaintiff-respondent and on one such occasion his signatures were obtained on a blank paper which was used for setting up the receipt aforesaid.

On the pleadings of the parties the following issues were framed by the trial court:

1. Whether the plaintiff is entitled for recovery as prayed for? OPP
2. Whether the suit is not maintainable and is bad for mis-joinder of necessary parties? OPP
3. Relief.

The respondent in order to establish his case appeared in the witness-box as PW1 besides producing PW3 Navdeep Gupta, hand-writing expert and his reports pertaining to the receipt dated 17.7.1994. That apart Ex.P3, photocopy of cheque dated 15.6.1992 and a photocopy thereof Ex.P.4, Ex.P5 a photo copy of cheque dated 27.6.1992, Ex.P6 report of document expert, Exs.P.8 and P9 photographs and negatives thereof as Exs.P.10 to P.17 were also produced.

The appellant in support of his case produced DW1 Jassy Anand who tendered into his evidence Ex.DW1/A his report, Ex.DW1/B to Ex.DW1/E photographs, which are exhibited and Exs.DW1/F to DW1/H and DW1/J negatives of the afore-mentioned photographs. Ex.D1 is the report of document expert Navdeep Gupta who was also the witness of the plaintiff-respondent. Besides this,

other exhibits in support of the pleadings were also produced.

The learned trial court after appraisal of the evidence before it decreed the suit of the respondent for recovery of Rs.94,000/- along with interest at the rate of 12% per annum from the date of filing of the suit till realisation of the decretal amount.

In appeal, the findings of the learned trial court were affirmed.

Aggrieved by the aforesaid judgments the appellant is in appeal.

Mr. Vikas Bahl, learned counsel for the appellant contended that the receipt dated 17.7.1994 is not a genuine document which is reflected from the report of the hand-writing expert Ex.DW1/A. Besides, the report Ex.D1 of another hand-writing expert Naveen Gupta reveals that the dates as appearing on two portions of this document are of different hands. On the strength of this evidence it was contended by the learned counsel for the appellant that no reliance could be placed on the receipt which was the basis for the suit for recovery. That apart it was contended that the suit was barred by limitation as it was presented before the trial court on 21.7.1997 and even if the receipt is taken to be correct, the suit is clearly barred by the principles aforesaid.

The aforesaid contentions as raised by the learned counsel for the appellant were seriously contested by the learned counsel for respondent No.1 who contended that both the courts have found as a matter of fact the receipt to be genuine and in regular second appeal the concurrent findings of fact cannot be interfered

with.

I have heard the learned counsel for the parties and have perused the record.

The sole basis for the suit for recovery was the receipt dated 17.7.1994, Ex.P1 which was alleged to be fabricated by the appellant. The evidence of the hand-writing experts on record and a perusal of the receipt do not conclusively establish the fabrication as alleged by the appellant. However, the respondent had pleaded that there were frequent transactions between him and the appellant in the shape of loans which were advanced to the appellant at the rate of 2% per month. It was also pleaded that the receipt was the outcome of the settlement of accounts. No record of the accounts had been produced by the respondent to show the existence of such transactions and settlement of any such accounts which could have led to the issuance of receipt dated 17.7.1994. In the absence of any such records the execution of the receipt is un-inspiring to say the least.

Both the courts had ignored this aspect of the matter in totality.

Once the respondent pleads the existence of financial transactions leading to the execution of a receipt as a measure of settlement of accounts, then the aforesaid factum should have been proved by adducing cogent evidence on record since it would form a part of the same chain of sequence of events and one cannot be segregated from another. No evidence exists to establish any financial dealings between the parties. The receipt executed is not in the nature of a pronote and bears only the signatures of the executor which has

not been explained by the circumstances and evidence, which leads to suspicion regarding the execution of such a document.

In so far as the question of limitation is concerned, the plea was clearly not pressed before the learned appellate court and hence not answered. However, the question of limitation is a question of law and can be raised even at the appellate stage provided the plea has been raised. The court is not precluded from examining the issue of limitation. Section 3 of the Limitation Act, 1963 reads as under:

> "**3.Bar of limitation. -** (1) Subject to the provisions contained in sections 4 to 24 (inclusive), every suit instituted, appeal preferred, and application made after the prescribed period shall be dismissed although limitation has not been set up as a defence."

A perusal of the plaint reveals that the same was presented before the court on 17.7.1997. Therefore, the suit cannot be held to be barred by limitation as the alleged receipt was executed on 17.7.1994. The questions of law that arises in the present appeal are - (i) as to whether the findings recorded by the courts below can be termed to be perverse so as to warrant interference by this court in a regular second appeal under Section 100 of the Code of Civil Procedure, and (ii) whether the question of limitation is a question of law and can be raised at the appellate stage? The aforesaid questions of law stand answered as above and it is held that the findings of the courts below in the absence of any evidence to show the transactions as alleged by the respondent leading to the birth of the receipt can be deemed to be perverse.

For the reasons stated above, the appeal is allowed and the judgments and decrees of the courts below are set aside.

15.12.2006 (MAHESH GROVER)
JUDGE

dss